

# SPEECH

OF

# HON. LYMAN TREMAIN,

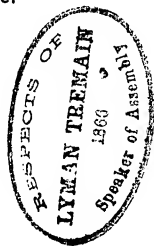
ON

THE RIGHT OF CONGRESS TO DETERMINE THE QUALIFICATION  
OF ITS MEMBERS AND TO DETERMINE WHEN THE  
PUBLIC SAFETY WILL PERMIT THE ADMISSION  
OF REPRESENTATIVES FROM THE STATES  
LATELY IN REBELLION,

AND

THE PRESENT CONDITION OF NATIONAL AFFAIRS.

In Assembly, March 1, 1866.



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# SPEECH.

IN ASSEMBLY, March 1, 1866.

The House took up the special order, being the resolutions introduced by Mr. Tremain of Albany, as follows:

*Resolved*, That in the judgment of this assembly, Congress is clothed with full power to determine on what evidence of returning loyalty and obedience, and on what terms and conditions it tended to secure the future peace and welfare of the nation, the States lately in rebellion shall be entitled to resume their normal relations with the Federal Government, by the admission of their Senators and representatives.

*Resolved*, That the faith of the nation, and especially that of the Union Party, is solemnly pledged to the freedmen of the South, that their freedom shall be secured and maintained by the national authority wherever that shall be requisite, and by such legislation as may be necessary and proper to accomplish that object.

*Resolved*, That recognizing in President Johnson a statesman whose personal sacrifices and patriotic conduct during the late civil war endeared him to the loyal people of this country, and recognizing in the Union majority of Congress a body of able and faithful defenders of constitutional liberty, as well as true representatives of the wishes of their constituents, the House is ardently entertained by this Assembly, that by conciliation, forbearance and mutual concessions, the existing differences between the President and Congress may be harmonized and by their joint labors and wisdom, the great work of restoring the American Union may be happily accomplished.

*Resolved*, That the Governor be requested to transmit copies of these resolutions to President Johnson and to our Senators and Representatives.

MR. TREMAIN said:

Mr. SPEAKER: Serious, if not radical differences of opinion upon a question of great importance, have been developed within the last few days, between the President and a majority of the representatives in Congress of the United States. As these distinguished functionaries were elected to office by the same great political party, and as these differences relate to the great question of the reconstruction or restoration of the states lately in rebellion, the conflict has excited, as it was natural it should, a most universally pervading and intense interest throughout the country. On the part of the opposition to the party in power, the conflict has been hailed with great satisfaction,

as affording reason for the hope that it would result in the rupture and overthrow of that political organization which to day holds possession of the Federal Government. If there are any members of the Union party who have been inclined to underestimate the magnitude of these events, or who have been disposed to be jubilant, in view of them, or to regard them as affording evidence that happiness, safety and peace may be or will be the result, I am not so fortunate as to be among the number. On the contrary, sir, since the success of our arms has been vindicated in the field, there is no event of a public nature, except the assassination of the late lamented President of the United States, that has filled my mind with emotions of sorrow and sadness like those which have been caused by the existence of these differences. They relate, sir, to a question in which the people of this country are profoundly interested—the political rights and powers and privileges that belong to the communities and the people of the states that but lately were engaged in an attempt to subvert and destroy the Union. They relate, incidentally, also, to the distribution of powers under the Federal Constitution, between the executive and the legislative departments of the government—a question which, ever since the formation of the Federal Constitution, has caused differences of sentiment among the most distinguished statesmen of the land.

Sir, in entering upon the discussion of these questions to which the resolutions, which I have had the honor to submit, refer, it shall be my studied purpose to utter no words that can, by possibility, increase the irritation, aggravate the existing differences, or widen the separation that seems probable and perhaps inevitable between the executive and legislative branches of the Government. I shall endeavor to speak with all kindness, with all moderation, and with all forbearance towards those who may entertain different opinions from the opinions which I shall

express; but at the same time, I shall endeavor to speak with that freedom and independence that I think should ever be displayed by a member of this body in the discussion of national questions in which the people of this State are so deeply interested.

Sir, this House, from the commencement of its session, now more than one-half expired, has exhibited a marked forbearance in avoiding any expression of its opinion upon the differences that seemed to be threatening and impending. It has referred to the standing committee on Federal Relations by a standing resolution, all questions relating to national affairs. It has felt reluctant to "rush in where angels fear to tread," and its committee on Federal Relations, with a forbearance and discretion that have done its members credit, have avoided precipitating upon the consideration of this House any questions of the character to which I have referred. But, sir, we have now reached a period where, in my judgment, if we longer avoid giving an expression upon the great principles involved—an expression tempered with kindness and moderation—but blended with firmness and decision we shall be guilty of moral cowardice and a flagrant neglect and dereliction of duty.

It is not necessary that I should detain this house by a historical sketch of the mighty events which have given rise to the questions to which I have referred. The history of the great rebellion is written in letters of fire and blood all over this land, and the evidences of it may be found in the hundreds of thousands of graves of the heroic and noble men who have offered up their lives as a sacrifice to preserve the government of their fathers. It is written, sir, in the destruction of property, North and South, greater than any war has ever before occasioned, the record whereof is to be found in the history of the world. It is written in the thousands, aye, the hundreds of thousands of weeping and mourning households all over this once happy land. It is written in the story of that terrible debt of three thousand million of dollars which now hangs, and for long years will continue to hang, like an incubus upon the energies, the labor, and the prosperity of the country. Sir, these events are all too fresh to require me to remind this house of their causes, their history or their progress. It is enough to say that, after a war of four years, in which this country was shaken from centre to circumference—after a war so gigantic in its proportions that the world has never known its like—a war in which millions of men on the one side and on the other have been drawn up in hostile array against each other, on the one side struggling to preserve, and on the other side to overthrow this precious republican government, and these free institutions, and everything else that was dear to us, at last, by the valor of our arms, and the interposition of that kind Providence who holds in his hands the destinies of nations and of men, the cause of the Union has triumphed.

And what do we next see? At the very next session of congress which succeeds the surrender of the rebel armies, the representatives of those eleven States which had precipitated the

country into this war, which had, by the most solemn acts of their political communities, declared that their relations with the Federal Government were destroyed, which had established a confederated government with all the machinery of a hostile nation—which had endeavored to subvert and overthrow our own fair republican fabric and build upon its ruins a hostile confederacy—present themselves at the doors of the National Congress and demand that they shall be admitted into the National Councils upon an equality with the representatives of those states that have ever been loyal and true. They claim that they have a right, under the constitution of the United States, without an investigation into their present condition, to be admitted to participate with our own representatives in the work of doing what? Not, sir, of regulating and controlling their own local affairs—not of passing appropriate laws for the government of the states which they represent, but to participate in passing laws for the government of the loyal states and people—a right to participate, in short, in all Federal legislation, no matter whether it relate to the preservation of the fruits of the war and the payment of the debt which has been contracted to carry it forward, or to any other measure in which the nation is vitally interested. And that brings me to the statement of the issue—the great pending important issue—to which I propose to direct the attention of this House. And, sir, in stating that issue, I shall not attempt to mistake the position of those with whom it may be my misfortune to differ. Nothing is gained in discussion, in the end, by any such course, and the true way is to state it fairly, in all its strength, in all its length and in all its breadth.

On the one side it is claimed that the ordinances of secession were null and void—that secession was a heresy that had no foundation in the constitution—that when the States became parties to the Federal Government they became bound perpetually to that Government, and could not withdraw at will from its binding obligations. They say that not only is this written in the constitution, but it has been affirmed by the judgment of the people after an appeal by those who believed in secession to the God of war, and, therefore, it must be regarded as settled. They say, in addition, that the ordinances of secession being null and void, the States were never out of the Union, and they, therefore, to-day have all the rights of representation in the Senate and in the House which that constitution secures to those who constitute an integral part of the Union; and upon these premises they charge that Congress, by denying them these rights, by refusing to take up each case and examine it separately, is guilty of a usurpation of power. At the same time they concede that Congress may examine into any merely constitutional qualifications of those senators and representatives, and also into the condition of their present loyalty, and if, after such investigation, it shall be found that their papers are regular, and they are elected according to the laws of the State they assume to represent, and they are themselves loyal and

can take the oath of office, they contend they have a right to be admitted, and consequently the refusal and denial to them of that right is a usurpation. I believe I have fairly stated the position upon the one side.

On the other side it is claimed that whether the states are in or out of the Union is not the question; that the constituents of these representatives, the people of the rebel states, have been and still are, legally in a state of actual war; that they have no right to political representation in either house of Congress until Congress shall determine their present loyalty and attachment to the Union and the Constitution; and that the powers of Congress are not confined to the simple inquiry whether their papers are regular and their election in accordance with the forms and laws of the state which they assume to represent, but that Congress has a right to inquire into the present condition of the constituency that stands behind them, and that Congress in determining a peace, which it is within the province of that body to declare, has the right also to obtain securities and guarantees that shall protect the future peace and welfare of this nation, and preserve this people, so far as it can be done by constitutional guarantees or otherwise, against any action that shall tend to lose to us the fruits of the great victory we have secured. And this, sir, constitutes the issue upon which I propose briefly to address this house.

Now sir, I am free to state, at the outset of the argument, that we find nothing written down in the organic fundamental law of the nation that in express terms applies to such a state of things. It is said that the framers of a code of laws for an ancient republic made no provision for the crime of parricide. They never conceived it possible that such a monster could exist on the face of the earth as a man who would deliberately take the life of the father or the mother who brought him into being. Our forefathers were equally charitable in the preparation of the national constitution. They had just gone through the war of the revolution, and after seven years of struggle and of blood, they had succeeded in planting here the great principles of civil and religious liberty, and in establishing a free and independent government, without kings or monarchs or rulers except the rulers the people themselves might select. And having secured this as the great fruit of their struggle, they never dreamed that whole states and whole communities would be found in the course of time, while they were in the full enjoyment of all the blessings this constitution had secured, arrayed in arms against their government, and bringing such tremendous forces to bear as have been brought to bear for its overthrow; nor did they dream that at the first session of Congress after these events, those constituencies occupying this position would be found by their representatives knocking at the door of the National legislature and demanding that their representatives should come in and participate equally with the representatives of the loyal states in the passage of laws that were intended for the government of the entire community.

Hence it is not surprising that there should be some differences of opinion on the questions which are now agitating the country, that are novel and without precedent, and to a certain extent without the benefit of the illumination that the framers of the constitution would have cast over that subject if they had foreseen and provided for it.

But, Mr. Speaker, if I am not entirely mistaken in the view I have taken of this subject, the right, the law of this case, under the law of nations and under the Constitution of the United States, is just as plain and just as clear as if it were written in pencils of light and embodied in the Constitution itself. Now let me call the attention of the House back to the proposition of those who claim that these States are entitled to immediate admission. As I have stated, the argument is that those States were never out of the Union, because the ordinances of secession were null and void, and that, being in the Union, the Constitution gives them an absolute right to representation in both Houses of Congress. It is a familiar rule of logic, that an argument which proves too much proves nothing. If this argument proves anything, it proves that, while war was flagrant, while the armies of Lee and Johnston were in the field, they had a right to representation. In the first place, if the Constitutional provision that each House is the judge of the qualifications of its members, is to receive the literal and ordinary interpretation that is put upon it, you could only inquire whether they possessed the three Constitutional qualifications that are laid down in the law which governs the qualifications of Senators and Representatives, age, length of citizenship and habitation at the time of election. But, sir, it is conceded by those who claim the right of admission, that you may go behind that and inquire into the present loyalty of the Representative—a concession which I shall have occasion hereafter to examine when I come to present my own views of this matter. But, sir, take that proposition; assume for the present that you may go so far and no further—that you may enquire whether they have the constitutional qualifications, and whether the representative himself is personally loyal, how then would stand the matter? Will any gentleman for one moment suppose that if the State of Georgia, while in flagrant war and rebellion, had selected Alexander H. Stephens, or some other gentleman of known union antecedents, or who had not participated in the rebellion so as to become actually or morally guilty of treason, and had sent such a man to Congress, according to the forms of law, and he could have taken the oath of office, and even the test oath, that was established by Congress after the war broke out, that Congress would have had no right to reject that man? Every man's sense of the necessity of self-preservation which belongs to governments and nations as well as individuals, compels him at once to reject such a monstrous proposition. It requires no argument to demonstrate the proposition, that Congress not only could reject him, but that it had no moral right to receive

him. And now I will endeavor to show on what principle that rests, and then I shall endeavor to show that that principle is in force to-day, just as plainly as it was when Gen. Lee, with his hundreds of thousands of troops and confederate generals were in the field. If they concede that Congress may reject a representative when flagrant war was raging, I should like gentlemen to tell me at what point of time the new right of representation that was suspended during the war, sprung into existence.

That leads me, sir, to the first proposition I propose to discuss, and that is, that in a war like that which was waged against the government of the United States, the people, the constituencies—the States, if you please, speaking of them as an aggregate of men, were carrying on civil war, as that term is understood by the law of nations, against the government of the United States; that by the fact of that civil war, all their rights under the constitution, if not destroyed, were suspended, and that the government had a right to treat them either as public enemies or as traitors, a right which still continues, and that the government, the people of the parent government, which has prevailed in the controversy, the people represented in Congress have the plainest and clearest right to determine the fact of a restoration of peace, and to determine, also, the conditions on which that peace shall be declared, and the clear and absolute right to withhold from those rebellious communities the enjoyment of their former political rights and privileges under the constitution until those conditions are complied with, and such guarantees as Congress may demand shall be obtained. If the terms or conditions which are demanded by Congress shall prove to be too onerous, an appeal lies to the people, who may instruct them and control them by public sentiment, or, at the proper time, may elect others to fill their places. But, in the meantime, Congress has entire jurisdiction of this question, and their judgment upon that subject is final and conclusive, and Congress, as the legislative power of the nation, representing the people of this country, and also as embracing each House with all the powers the constitution confers upon each House, have the right asserted in my first resolution, to declare upon what evidence of returning loyalty and obedience and on what terms and conditions intended to secure the future peace and welfare of this nation, the rebellious States shall be entitled to the admission of their senators and representatives, and thus to resume their normal relations with the Federal Government.

Let us see what the writers and authorities recognized all the world over as furnishing the true rules applicable to civil war and what the Supreme Court of the United States have said upon the question now under consideration. Vattel, in his treatise on the law of nations, speaks of a civil war like that in which we have recently been engaged, in the following terms:

"But when a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, the State is

*dissolved and the war between the two parties stands on the same ground in every respect as a public war between two different nations."*

I quote from Vattel only on this point, altho' every writer on the law of nations affirms the same doctrine. That very principle has been enunciated, too, by the Supreme Court of the United States. I will not multiply authorities on that subject, but I will simply read a passage from the decision of the Supreme Court of the United States, in a case which arose under the blockade of the rebel ports, and involved the question whether property captured at sea, belonging, if you please, to those rebel enemies, was liable to forfeiture. If the case was merely a riot or even a robbery, of course the criminal actors did not, by their crimes, forfeit their rights to the property. It must rise to a higher grade of conflict and become war, before such a consequence would ensue. The Supreme Court decided that the property was forfeited or confiscated by the law of nations and their determination of the point in issue, involved the consideration of the character of our civil war and the rights of the Government as against the people engaged in it. This is the language of the Court:

"Now it is a proposition never doubted that the belligerent party who claims to be sovereign may exercise both belligerent and sovereign rights. [See 4 Cranch, 272.] Treating the other party as a belligerent and using only the milder modes of coercion which the law of nations has introduced to mitigate the rigors of war, cannot be a subject of complaint by the party to whom it is accorded as a grace or granted as a necessity."

"We have shown that a civil war, such as that now waged between the Northern and Southern States, is properly conducted, according to the humane regulations of public law, as regards capture on the ocean."

"Under the very peculiar constitution of this government, although the citizens owe supreme allegiance to the Federal Government, they also owe a qualified allegiance to the State in which they are domiciled; their persons and property are subject to its laws."

"Hence, in organizing this rebellion, they have acted as States claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. Several of these States have combined to form a new confederacy, claiming to be acknowledged by the world as a sovereign state. Their right to do so is now being decided by wager of battle. The ports and territory of each of these States are held in hostility to the General Government. It is no loose, unorganized insurrection, having no defined boundary or possession. It has a boundary, marked by lines of bayonets, and which can only be crossed by force. South of this line is enemy's territory, because it is claimed and held in possession by an organized, hostile and belligerent power."

"All persons residing within this territory, whose property may be used to increase the revenues of the hostile power, are in this contest liable to be treated as enemies, though not foreigners. THEY

HAVE CAST OFF THEIR ALLEGIANCE AND MADE WAR ON THEIR GOVERNMENT, AND ARE NONE THE LESS ENEMIES BECAUSE THEY ARE TRAITORS."

Now, Mr. Speaker, we observe in the light of these authorities that these communities were public enemies, in the first place—a character that is atrocious enough to justify all and more than we claim—but which the Supreme Court say is a mild character in comparison with the other double-headed character they bore, viz: that of traitors against the government.

Sir, it would seem to be unnecessary to cite any authorities to show that where communities, speaking of them as entire communities (for you cannot make a distinction between the loyal and disloyal people, when the States in which they reside are arrayed against you, any more than in the case of a foreign war, with England, if you please, you could make a distinction in favor of John Bright and those men who may have continued to be the friends of our country) are traitors against the Government, they can under no circumstances claim the right to legislate for the government which they are seeking to overthrow.

Permit me, however, to read what this world-renowned author Vattel says about that law of self-defense and self-preservation, as applicable to a nation, which would be sufficient to authorize Congress to reject the representatives of such a people. He says:

"Since, then, a nation is obliged to preserve itself, it has a right to everything necessary for its preservation. For the law of nature gives us a right to everything without which we could not fulfill our obligations, otherwise it would oblige us to impossibilities, or rather would contradict itself in prescribing a duty and prohibiting at the same time the only means of fulfilling it." \* \* \*

"By an evident consequence from what has been said, a nation ought carefully to avoid, as much as possible, whatever may cause its destruction, or that of the state, which is the same thing."

*"A nation or state has a right to everything that can secure it from such a threatening danger, and to keep at a distance whatever is capable of causing its ruin; and that from the very same reasons that establish its rights to the things necessary to its preservation."*

We say, then, that the judgment that every man's instinct would pronounce on the question whether these communities had the right to representation, is confirmed by the great law of self-preservation and self-defence which underlies the right of nations as well as of human beings. And, sir, Vattel more specifically and plainly defines the effect of civil war upon those political rights that would belong to men in a state of loyalty and peace. This is his language:

*"A civil war breaks the bonds of society and government, or at least suspends their force and effect; it produces in the nation two independent parties who consider each other as enemies and acknowledge no common judge. These two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a*

*time, two separate bodies, two distinct societies. Though one of the parties may have been to blame for breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament of two nations who engage in a contest, and being unable to come to an agreement, have recourse to arms."*

How do we stand at this stage of the argument? We show by the decision of the Supreme Court of the United States, and by the laws of nations, that in a civil war these communities, which now claim representation, occupy the double position of public enemies and traitors against their government. We see that by the law of nations Congress has the right, in self-preservation, to eject from its bosom the vipers who would come there to obtain possession of the national secrets, only to betray them, or to legislate only to embarrass the government and aid the rebellion. If they are true to their constituents, no matter how loyal the representatives might be themselves, they would do everything they could to embarrass and obstruct the government in proceeding against the power they represent.

Mr. WEED [of Clinton]. Will the gentleman allow me to ask a question?

Mr. TREMAIN—I will not yield the floor at present. Now, sir, we say, then, upon this proposition, that it was not necessary to have any written law in the Constitution declaring that Congress might refuse to receive representatives from those States, while war was flagrant, when civil war was existing.

Now, as I said before, if when Lee's army was in the field they had not this right, when did it spring into being? Was it when Lee's army surrendered? Was it when Johnson's army surrendered? When, I ask, did this right, the denial of which is called a usurpation on the part of the people of this country represented in Congress, mature and become clothed anew with the panoply which fidelity and loyalty impart? Will they say it was when the arms were taken from their hands, when the rebel armies, to avoid destruction, surrendered to Grant? If since that, when did the right accrue? Will they tell me that peace now prevails? Where is the evidence of it? Sir, when two belligerent foreign nations are at war, peace can only be made by a treaty, which is an agreement—a contract of the highest nature known in the law—a contract between the two parties in which each must give its assent as to the terms and conditions on which peace shall be proclaimed. They are still enemies, though one may have conquered the other. There is no right for the citizens of the conquered nation to appear in the courts of the other nation to prosecute for any right. They have no rights as recognized by the laws of the belligerent power, until, by a treaty entered into between the contracting parties, they have themselves assented to the terms and conditions of peace. And, sir, were it not that the Constitution

of the United States provides expressly for the mode in which a treaty of peace between belligerent nations may be solemnized, Congress alone, as the representative of the people and clothed with the supreme legislative power of the nation, would possess the power to ratify the treaty. But we have an express provision that, in such a case, the President and Senate may make a treaty; and when a treaty is made, and not till then, is the assent of the people obtained through the action of the constitutional authorities, and the President issues a proclamation declaring peace as established by the deed.

In the case of a civil war resulting in the overthrow of the rebellion, either there are two parties to the war or there are not. If there remain two parties, the parent government being one, and the Constitution not providing for a treaty by the President and Senate, Congress would, from necessity, possess the power to assent to and ratify the terms of peace. If, on the other hand, the overthrow of the rebel power leaves but a single party in the field, that power is the parent government. In this case it would be the United States, and from the same necessity Congress, representing the collected will of the nation, having power to suppress insurrections and to call forth the militia to execute the laws, and authority to pass all laws necessary to carry these powers into execution, would possess the right to proclaim the peace and determine the time when it should commence, and the terms, conditions and guarantees that should precede its establishment and promulgation.

But, sir, it may be said that peace now prevails, and therefore this suspension of all constitutional and civil rights, which, as we have shown by the law of nations, grows out of war, and which the Supreme Court of the United States have adjudged to be applicable to these rebels, is at an end. On the contrary, I say that legally and actually the rebellion still continues. Is this a startling proposition? Let us look at it. What says the President, and what says the learned and distinguished Secretary of State on this question? In 1865 a law was passed by Congress called the Freedman's Bureau bill, the first section of which declared that there should be established in the office of the Secretary of War a bureau for freedmen, refugees, &c., "which should continue during the rebellion and for one year thereafter." Congress, within the last few days has passed a second Freedman's Bureau law, intended to continue for a longer time than the law of 1865, which the President, in the exercise of his constitutional prerogative has vetoed. In that veto message, which is a public document, he says he does not think it is necessary now to pass this law, because he says by the terms of the existing law it continues during the rebellion and for one year thereafter. He says the rebellion still continues, and that the bureau will continue for one year from some indefinite future period, when the rebellion will be declared to have terminated, either by proclamation from the President or from Congress. This same doctrine was reaffirmed in the speech of the Secretary of State, recently delivered on

a public occasion in the city of New York. Then, by the action and interpretation of the political authorities of this government, the rebellion still continues, legally and actually, and the proceedings of the constituted authorities of our state and of the nation, have all been in harmony with that view of the subject. Soldiers from New York and other states who enlisted for a period of three years "or during the war," are now held by the authorities at Washington, although under the second alternation of their enlistment they would be entitled to their discharge unless the war still continued. I need not refer to the undoubted exercise of war powers by the President in appointing provisional governors, and in dictating the terms upon which the people might be represented in their state conventions—the prescribing of the terms on which the elective franchise might be enjoyed; powers exercised long after the actual cessation of open hostilities; but I come to this day. The President, to-day, under the war power alone (which by the Constitution makes him commander-in-chief of the militia of the different states when it is called into the service of the United States) sends military forces through the Southern States wherever he chooses. He suspends the writ of habeas corpus throughout those States wherever he chooses, and he declares martial law to prevail throughout those States wherever he chooses. These cases are frequent and the range of their operation extensive.

This State has concurred in the view of the case that the war still continues. You had a law passed a year since which provided that soldiers who are out of the State "during war" may vote in camp. The question was presented to our Secretary of State last fall, when there was just as much peace as there is now, whether he had a right to take the votes of absent soldiers under that law. He took the written opinion of Judge Denio, chief justice of the Court of Appeals, and of other distinguished jurists, and they said that the law still continued in force. The Secretary of State then sent instructions to our absent soldiers, and their votes were returned and counted.

I say, then, if I am right that public enemies and public traitors have no right to representation, there is no question but congress may now exclude their representatives.

But, sir, suppose that the President should issue a proclamation to-day, declaring the rebellion at an end and proclaiming peace? I observe that the President himself, as well as the Secretary of State, with most commendable caution (because this question is a novel one) does not assert the exclusive right in himself to issue a proclamation which shall have binding force and effect, for both say that when a proclamation by the President or Congress or both shall issue then and then only they speak of a state of peace as existing. I think it is entirely true that Congress is the party to determine when peace prevails. I shall endeavor to show that by another branch of my argument, presently. But I say suppose the President, to-morrow was to issue his proclamation declaring the rebellion

at an end and peace existing. These representatives then come, it is claimed, clothed with the right of representation. Suppose, however, that Congress, having full power to send for persons and papers, on looking over the ground and investigating the condition of the constituency of these representatives, should find the constituent body still disloyal, that the flames of disloyalty were only slumbering—and like the sleeping volcano, were ready to burst forth again whenever an opportunity occurred, that the rebels, unrepentant, were still filled with hatred against the parent government. Suppose they should find there was no loyalty and no allegiance there. I am not speaking of this as an actual state of things; it is enough for the argument that I affirm the existence of the power in Congress to ascertain the existence of these facts. Suppose Congress should find that they were still making, what is called in the law of nations, "private war" against every Union white man among them, and that neither his life nor his property were safe; and suppose they should find they were making "private war" against the colored allies of the North who were living in their midst; and suppose reliable reports came up through the Freedman's Bureau and other sources, proving conclusively that assassinations of the allies of the Government were numerous, because they had been faithful to the Union; and suppose Congress should become satisfied that they simply desired to get back into the Union, that they might use their power to prevent the collection of the Federal debt and to embarrass the government in every way in carrying into execution those great measures which sprang into existence while they were absent from the Senate and House carrying forward the war of the rebellion; and suppose Congress should find that they came there with the settled purpose of obtaining indemnity for the slaves they had lost as one of the fruits of the war (and that they have that disloyal measure in view is shown by the proceedings of what was called the National Democratic Convention recently held in Mississippi, where they passed resolutions declaring that they intended to demand compensation for all their slaves lost during the war, and to uphold the Democracy of the North, and to unite with them for the accomplishment of that purpose;) and suppose that in every form in which Congress should apply the tests to these communities, it should find that they were still just as disloyal as they ever were, although their arms have been wrenched from their hands; and suppose that Congress should think proper to apply other tests, and say, now in order to guard the nation against the disgrace that would follow from yielding up the fruits of the bloody contest after the victory had been fairly won, we desire to have them consent to an amendment to the Constitution of the United States that the Confederate debt shall never be paid; that Congress should become satisfied that these people are determined to impose, as far as they can by the exercise of federal power, the burden of discharging the Confederate debt upon Union men of the North and South; and suppose that these tests, intended forever to prevent

the payment of the Confederate debt and the repudiation of the National debt, and such other amendments to the constitution as shall show their loyalty and their penitence, they unani- mously spurn and reject? In such a contingency is Congress powerless over the subject of representation? If Congress possesses no power to exclude them under such circumstances, there is no power on earth that can exclude them; and I ask whether it is true that the same Congress which, as I have shown is clothed by the law of self defense with the right to reject these representatives, when as we have seen by the law of nations the political rights of their constituents are destroyed or suspended has no right to determine the conditions upon which peace shall be proclaimed. I ask, I say whether Congress in this case has less power in dealing with men who stand before them in the two-fold character of public enemies and traitors than if war were still flagrant. With public enemies alone, it is an elementary principle in the law of nations, that in making peace, you may, if you have conquered them, or prevailed in battle against them, demand indemnity for the past and security for the future. That was the doctrine claimed in the war with Mexico. Here, nobody proposes indemnity for the past. Nobody proposes to follow up the war by the confiscation of estates. Nobody proposes to punish the masses by the penalties which attach to treason, though they have committed the highest crime known in the laws of civilized nations. But the question is, shall they enjoy political rights against the will of Congress? Shall they govern, not merely themselves, but you and me, and the loyal people of this country? Is Congress powerless to determine whether there shall be security for the future? It is the only case, if so, in which the power which prevails has no control over the subject of peace, and in which peace must come without its agency. It is the only case in which the victor has no right to dictate the conditions upon which it will declare and assent to the existence of peace. It has no right to provide security for the future, no right to exact guarantees, no right even to go behind the personal qualifications of the representatives and to inquire into the qualifications of the men who sent them there. Can that be the law? Is it not as plain as any proposition can be that Congress has power to determine this question? that as the party on the one side, which has succeeded, it has the power to determine what proofs are essential to satisfy it that these people are again loyal, at least, that they have repented the great wrong they have done, and are willing to come back, if they are permitted, to the national councils, and participate with national men in the great work of helping forward this government to accomplish the high mission which God has intended it shall fulfill.

Now, I have affirmed in the proposition which I have had the honor to submit to this House, that Congress has the power to determine on what evidence of returning loyalty and on what conditions intended to secure the future peace and welfare of the country, they shall be



entitled to representation and to resume their normal relations with the Government. What is Congress? Congress is defined in the Constitution as the legislative power of the nation. It embraces in its legislative capacity not only the Senate and House of Representatives, but the President, as he may approve or disapprove the laws enacted. And in another sense, also, as the greater includes the lesser, Congress includes each House, and, therefore, possesses all the powers which, under the Constitution, is conferred upon each House, in that familiar provision which declares that each House shall be the judge of the elections, returns and qualifications of its members. And here, permit me to inquire what is the true interpretation of the provision I have just quoted? It is claimed with great plausibility (and I am not quite prepared to say that the claim is not correct), that the meaning of the word "qualifications" in the Constitution, in the case of a Representative, is, that he being twenty-five years of age, having been seven years a citizen of the country, and at the time of his election being an inhabitant of the State from which he is chosen; and in the case of a Senator being thirty years of age, and nine years a citizen of the country, and at the time of his election being an inhabitant of the State from which he is chosen, he is qualified. I find on looking at Cushing's Parliamentary Law, in which a large variety of cases are collected under that provision that it is held, that this provision simply authorizes the body to inquire into the presence of the qualifications required by the law applicable to the case; and he quotes the provisions of various State constitutions when they confer upon the Legislatures the power to determine, as in this case, the returns and qualifications of members, and there are various disqualifications in some States which do not exist in the case of representatives to Congress. For instance, in some States, if a man be guilty of duelling, though not convicted, and in others if men entertain certain religious beliefs, or disbelieve in the existence of a Supreme Being, or of a state of future rewards and punishments, they are disqualified. But it is most probable that in all the authorities, the word "qualifications" simply means such requisites as by express provisions of law are applicable to the person whose qualifications are to be determined. In this case, there is no constitutional provision establishing qualifications except the three to which I have referred, viz.: age, citizenship and residence.

Now, sir, our friends who differ from the view which I have taken as to the general power of Congress, concede at the outset that you may inquire into the loyalty of a representative. How can you do that if you are simply confined to an inquiry into the constitutional qualifications? I observed, a few days ago, that the President recognizes the right to inquire into the loyalty of a representative in an address to a committee of the Legislature of Virginia, where he used this language:

"The representatives of the states and of the people should have the qualifications prescribed by the Constitution of the United States, and

those qualifications most unquestionably imply loyalty. He who comes as a representative, having the qualifications prescribed by the Constitution, to fit him to take a seat in either of the deliberative bodies which constitute the National Legislature, must necessarily, according to the intentment of the Constitution, be a loyal man, willing to abide by and be devoted to the Union and the Constitution of the States."

According to the interpretation of the word "qualifications," it is limited so as to mean that you have no right to go behind the question whether he is elected according to the laws, whether he has a certificate in due form, and whether he sustains the three qualifications required by the Constitution. Yet it is conceded by those occupying a position antagonistic to me, that you may inquire into the loyalty of each representative. Where is your power to do it? It rests not merely upon the constitutional provision which alone is supposed to give the right, the one which gives to each House the right to judge of the returns, elections and qualifications of its own members — but it must rest on higher and broader grounds, springing from the laws of war and the laws of nations, and the destruction or suspension of their constitutional, civil and municipal rights which I have endeavored to explain. And, if it be so, that you may inquire into the loyalty of a representative, a qualification which is not expressly required by the Constitution, I ask why the same principle would not allow you to inquire into the loyalty of the constituency behind him? Can it be sufficient that the representative himself is loyal when his constituency are disloyal?

Sir, there is another reason why, if the power I am contending for rested simply upon this provision of the Constitution, it would be more likely to carry the power to enquire into the loyalty of the constituency than into the loyalty of the representative himself. Why? Because the Constitution says not only that each house may judge of the "qualifications" of its members, but may judge of the "elections" of its members also. It may unquestionably determine whether the election was an election by a lawless mob. It may undoubtedly reject a man who comes with credentials regular in form but which emanated from a source which shows that the voices of the loyal union loving people have not sent him there. And when it has the power to judge of the elections — when it may inquire into the loyalty of the representative, as is conceded, I would like to know whether it cannot inquire whether his "election" was an "election" by disloyal men, occupying the position of public enemies, and traitors against the government? But, as I have said before, the proposition I have advanced in my first resolution, covers the power, in its broader sense, which belongs to Congress in its legislative capacity, as well as includes the power in each house which constitutes Congress, in the clause to which I have referred.

There is another branch of this subject to which I will invite the attention of the House, and that is that the acts of Congress themselves

afford a strong and cogent precedent, and bear with much force upon this subject, and reflect great light upon the question we are now considering. How was it that these States, eleven in number, were declared in a state of insurrection? It was not by the act of the President; it was by law of Congress, authorizing the President to issue a proclamation declaring a state of insurrection. In that law, Congress authorized the President to issue his proclamation declaring these States in insurrection, and the law prohibited all intercourse with the rebels so long as that hostile condition continued. I refer to the act of Congress passed in July, 1861. I read the 5th section:

*"And be it further enacted, That whenever the President, in pursuance of the provisions of the second section of the act entitled 'An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for that purpose,' approved February twenty-eighth, seventeen hundred and ninety-five, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then and in such case it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States; and, thereupon, all commercial intercourse by and between the same and the citizens thereof, and the citizens of the rest of the United States, shall cease, and be unlawful so long as such condition of hostility shall continue."*

On the 16th day of August following, the President issued his proclamation declaring the people of eleven States in insurrection, and reaffirming the declarations of that law, that all commercial intercourse should be unlawful, except it was by a permit from the President or the Secretary of the Treasury, in particular cases. That law of Congress stands in full force to-day. It has never been repealed. Congress, in the undoubted exercise of its power (the President being included as a part of Congress, in the constitutional sense), passed a law declaring that all intercourse with these rebels should be unlawful while the condition of hostility shall continue, and declaring the people in insurrection only issued proclamation pursuant to that law of Congress. It would seem proper, if the proclamation followed the act of Congress, that the proclamation of peace should also follow an act of Congress. But whether it follows or precedes, the provisions of the act of Congress declare that commercial intercourse shall be unlawful

so long as a condition of hostility continues. And yet we are told that Congress cannot inquire whether hostility continues—whether a hostile intent continues in full force on the part of the southern people, notwithstanding war has ceased to rage. We are also told that political intercourse in Congress must commence while commercial intercourse is prohibited by an act of Congress.

Again, Congress passed an act creating a test oath, and which required every member of Congress and all other persons holding office under the Federal Government to take an oath, not only that he would support the constitution, but that he "had never voluntarily borne arms against the United States since he had been a citizen thereof; that he had voluntarily given no aid, countenance or counsel or encouragement to persons engaged in armed hostility thereto;" and yet, with all these laws on the statute books, the validity and constitutionality of one of which, at least, has never been questioned, it is claimed that Congress is powerless to say that a condition of hostility still continues; that Congress is incompetent to declare when the rebellion has ceased, or that those States shall not be represented until such time as Congress shall declare they are entitled to representation, or peace shall be proclaimed on such terms as shall be satisfactory to the legislative power of this government.

Let me cite another most significant act of Congress. On the 8th of February, 1865, a joint resolution was approved by President Lincoln in the following words:

*"Whereas, The inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee, rebelled against the government of the United States, and were in such condition on the eighth day of November, 1864, that no valid election for electors of President and Vice President of the United States, according to the Constitution and laws thereof, was held therein on said day; therefore,*

*Be it resolved, By the Senate and House of Representatives of the United States of America, in Congress assembled, that the States mentioned in the preamble to this joint resolution are not entitled to representation in the electoral college for the choice of President and Vice President of the United States, for the term of office commencing on the fourth day of March, 1865; and no electoral vote shall be received or counted from said States concerning the choice of President and Vice President for said term of office.*

*Approved February 8, 1865."*

Now the constitution secures to each State the right to cast in the Electoral College a number of votes equal to its representation in Congress. Here is an assertion by Congress of the right to deprive the rebel States of this great privilege, the right to participate in the election of President and Vice-President. Congress recognized and declared the suspension of this great constitutional right as the result of the civil war. The nation affirmed it, and President

Johnson holds his high office by the vote of the party which passed this resolution, by virtue of an election held in conformity with this assertion of power. Does any one doubt the validity of such a resolution? If not, the same rule applied to their right of representation in Congress. If their right to participate in the election of President was then suspended, when was it resumed? When did it become paramount to the power of Congress, and overriding its judgment and its will become perfect and absolute?

Now, Sir, I hope the House will excuse me if I quote the opinion of a man who has lately gone to his rest, but who enjoyed the confidence of the Senate of the United States, of which he was for many years an honored member, to a greater degree, probably, than any other member of that body. He was eminent as a lawyer, eminent as a judge of the highest court in his State, and he lived to the ripe old age of over seventy years. He was a man conservative in all his views although thoroughly and intensely loyal, but he was yet so fearful of exercising doubtful powers that he voted against the legal tender act, and every confiscation act. But, Sir, in the last speech he made before he went to receive his reward, he took his position on this question of the constitutional power of Congress over the right of the rebel States to representation, and there he stood like a rock. This was the language of Jacob Collamer:

"It is for Congress to say when that state of things existed which would entitle the rebel States to perform their functions as integral parts of the Union.

"When will and when ought Congress to admit these States as being in their normal condition? It is not enough that they stop their hostility and are repentant. They should present fruits meet for repentance. They should furnish to us by their actions some evidence that the condition of loyalty and obedience is their true condition again, *and Congress must pass upon it*, otherwise we have no securities. And I insist that the President, by making peace with them, if you please by successing military operations, does not alter their status until Congress passes upon it. The great essential thing now to insist upon is that Congress shall do nothing which can in any way create a doubt about our power over the subject. I believe that when re-establishing the condition of peace with that people, Congress, representing the United States, has power in ending this war, as any other war, to get some security for the future. It would be a strange thing if it were not true that this nation in ending a civil as well as a foreign war could close it, and make peace, by obtaining, if not indemnity for the past, at least some security for future peace."

There spoke the statesman, the patriot, and the sound constitutional lawyer.

And now, let me notice an objection or two from high sources to the view I have taken. The President of the United States, in combating the view which I have endeavored in a feeble way to present, says that the Constitution of the United States provides that the states shall always have their representation in the Senate,

and in another clause, that they shall always have at least one representative in the House. Now, sir, the provision in regard to the representation in the Senate is article 5, which provides for amendments to the Constitution, and prescribes the mode in which they shall pass, but concludes by reserving two subjects in relation to which there can be no amendment to the Constitution. One reservation is this: "Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses of the ninth section of the first article," which was in fact a provision against any amendment to the Constitution, which before 1808 should prohibit the importation or emigration of such persons to this country as the states should think proper to admit. The other exception was "that no state, without its consent, shall be deprived of its equal suffrage in the Senate." What was the object of that? That when you amend the Constitution you cannot so amend it as to deprive the states of having two Senators, a provision growing out of the jealousy of the smaller states that at some future time they might be deprived of their equality in the Senate. What is the other provision in regard to representation? It is a section providing for the distribution of representatives according to population, and it provides that the number of representatives shall not exceed one for every thirty thousand, and that each state shall have at least one representative. But these provisions are entirely consistent with the views I have assumed—that all those rights are suspended in a state of war, and cannot exist until the war is closed by the action of the constituted authorities of the nation. Neither of these provisions is more mandatory than those which in article 2 secure the right to participate in the election of President and Vice President to which I have referred. Neither is more forcible than the constitutional right of the people to be secure against seizures of their persons or property, provisions which no man has shown to be inapplicable to rebels waging war more conclusively than the President himself.

It is also said that it is a great disadvantage to keep those States out—that it checks the operations of trade and industry, and prevents the advantage of commerce in these States. Grant it. Whose fault is it? Why did not those States think of that before they plunged the country into the vortex of rebellion? Why did not the Senators and Representatives from those States think of that before they insulted the majesty of the nation by withdrawing from their places with insolent and treasonable threats, and taking their positions in rebel camps and in the rebel Congress for the purpose of overthrowing the government? This argument is one of expediency. Let us look for a moment to the other side of this argument of policy or expediency. It is the uniform practice of every civilized nation never to bring to punishment for treason in a great rebellion, any except a few leaders, a general amnesty usually issues to them all, and this rebellion constitutes no exception to it. I do not object to the lib-

erality with which pardons have been extended to those who have been engaged in rebellion. Confiscations have been stopped; and now, sir, the simple question is, whether Congress may not, until it has become satisfied that these men are loyal and will be true to the Union, deprive them of their representation under the Federal Government until that state of things exists and proper guarantees can be obtained.

We see that the great body of rebels incur no risk of being hung, no hazard of loss of property by confiscation. They risk their lives on the battle field, but a death there they may regard as honorable, and it would be so considered if success crowns their efforts. They take the chances of securing the prize if they succeed. If they fail, does the argument of expediency require that they shall run no risk of losing their political rights, either absolutely or temporarily? Such a doctrine holds out a premium for rebellion.

Their struggle was for political power. Having failed, shall they, as a matter of course, resume their former political rights, and is Congress powerless to act upon the question? Every consideration of justice, and of regard for the future peace of the nation, revolts at the thought.

We are making a precedent for all coming time. Let us make haste slowly. A mistaken step by admitting them now is irretraceable. If the right of rebels to representation in Congress were suspended during the lifetime of the rebels, their punishment would be light in comparison with their deserts. The arguments on the score of expediency against the power of Congress to determine the terms of their admission, seem frivolous when weighed in the balance against the arguments in favor of preserving the nation for all coming time against the liability to another similar rebellion.

The Scriptures, too, have been quoted against us. It has been said that we ought to imitate the example of the father who received the prodigal son, and who killed, because of his return, the fatted calf. I have been quite unable to discover any analogy between the case presented by that touching and beautiful parable and the case of the southern rebels. As I read that parable in St. Luke, it was not until after that son had squandered his portion of his father's estate, and was reduced to penury and want and had brought himself to the condition where he could obtain no food that, in the language of the Evangelist, "he came to himself" and his delusion ceased, his temporary insanity passed away, and he saw things in their true light. He was not only convinced of his folly, but he became truly penitent, and he said in the agony of his heart, "I will arise and go unto my father, and will say unto him, 'Father, I have sinned against Heaven and before thee, and am no more worthy to be called thy son; make me as one of thy hired servants.'" It was not until after that that his father saw him at a long distance when he ran towards him, fell upon his neck and kissed him. Where is the analogy? Suppose that the son, after he had spent his portion of his father's inheritance had said "I

will accept the necessities of my condition; I hate the old man with an intense hatred; I propose, as I am naked and cannot get any good clothes here, to go back to the governor's; I will get into the old man's house; I will make him disgorge his money and open the hospitalities of his house to me." Suppose, I say, such had been the language of the son, you have nothing in the parable to show what would have been done by the father. I think if such a case had presented itself, the only record you would have found about a "calf" would be that the son must have been a "calf" to suppose he could so easily deceive any old father of sufficient sagacity to accumulate property. (Applause.)

But, it is asked, what are the terms and conditions you propose? The question is not relevant. It is not for me to prescribe the terms and conditions, it is for Congress. As I said before, if we are dissatisfied with the terms and conditions prescribed by Congress, at the proper time instruct and enlighten them as to your will, and if they still remain obdurate send others in their places; they are your servants. The question as to the terms and conditions which should be required is a totally irrelevant inquiry to the issue now existing between the two departments of the government. A wide diversity of sentiment may exist as to what terms and conditions should be required. Some will say that they ought to consent not to take the fifteen additional members in the House of Representatives and electoral colleges which the emancipation of the slaves secures to them, because it is a state of things the framers of the constitution did not contemplate when they made the basis of representation, which was a basis of slavery. Others may say that they ought to consent that all colored men be accorded full civil and political right. Others may say that they should consent to have an amendment of the constitution, which will make their basis of representation just and equitable, which will guard against the repudiation of our debt and against the imposition of taxes to pay the Confederate debt. Others will suggest other terms, but I will tell you one condition which I think we have a right to require if we choose as a condition of peace, and that is the condition which the patriots of North Carolina required by law from the Tories of the Revolution. While they were enacting "that all manner of treasons, misprision of treason, felony or misdemeanor committed or done since the fourth day of July, in the year of our Lord, seventeen hundred and seventy-six, by any person or persons whatsoever, be pardon'd, released and put in total oblivion;" they at the same time "provided, also, that nothing herein contained shall entitle any person by this law to be benefitted, to elect or be elected to any office or trust in the State, or to hold any office, civil or military." "To elect or be elected," it not only disqualifies them from holding office, but it disqualifies them from possessing the political power of electing others to office. I say that Congress has a perfect right to require that.

If such a condition was proper when applied to the Tories who were adhering to the existing

government, how much more just would it be as against the rebels against this Government which had done them no wrong, and which was the last hope of the friends of human rights and of Republican government?

Andrew Johnson, when Governor of Tennessee, before he was nominated as the candidate of the Union party for Vice-President, asserted, in the broadest terms, the proposition that no man in Tennessee should participate in the formation of that new government except loyal men. This is his language:

"In calling a Convention to restore the State, who shall restore and establish it? Shall the man who gave his means and influence to destroy the Government? Is he to participate in the great work of reorganization? Shall he who brought this misery upon the State be permitted to control its destinies?" Again he asks, "Why all this blood and carnage? It was that treason might be put down and traitors punished; therefore, I say that traitors should take a back seat in the work of restoration. If there should be but 5,000 men loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely."

"In going into the recent rebellion or insurrection against the government of the United States we erred; and in returning and resuming our relations with the Federal Government, I am free to say that all the responsible positions and places ought to be confided distinctly and clearly to men who are loyal. If there were only 5,000 loyal men in a State, or a less number, but sufficient to take charge of the political machinery of a State, these 5,000 men, or a less number are entitled to it, if all the rest should be otherwise inclined. I look upon it as being fundamental, that the exercise of political power should be confined to the loyal men."

Sir, I am prepared to stand by the proposition, that Congress has that right; to say, and no rebel or rebel sympathiser has a right to complain if Congress should say, "Hence forth, loyal men and they only shall control and govern this country; loyal men, and they only, shall exercise political power—and as a consequence, if you have but few who have followed the old flag they shall be regarded as the supporters of the true faith, and they only shall exercise that power. If the constituent body be small it will grow in process of time, but you rebels have no right to complain, if, when you have forfeited all your rights, and been guilty of treason, the blackest crime in the catalogue and that too, against the best government which the sun ever shone upon, yet you are spared the punishment that your crimes have merited and your property is saved to you, and you are permitted to exercise the power in a state government, you have no right to complain that you are not permitted to come into the Federal government and exercise power and rule over us. I say Congress has a right to take that position.

In my resolutions, I have said nothing about the veto of the Freedman's Bureau bill. The reason is because I desire to avoid making any issue where there may be no necessity for one,

and with the exception of the concluding part of that message there was nothing in it that need necessarily to have excited apprehension and alarm, throughout the country, for he had a right to veto. I confess, from a perusal of the veto, without examining the bill, it struck me that there was considerable force in some of the objections taken to the bill. But I cannot endorse the veto message, because in the concluding part the President says that it is a serious objection against the bill that it was passed in the absence of the representatives from eleven States. I have endeavored to show that it is the result of their own wrong if they were absent, and that their absence is no reason for condemning any law passed in their absence. I cannot, therefore endorse that part of the message. But I do not deem it expedient or wise to make any issue in this body about it. The veto has accomplished its purpose. The Freedmen's Bureau bill was defeated by it. It lacked the two-thirds of the Senate necessary to pass it over the President's veto, and it seems to me unwise to throw in that subject, which may be a firebrand, as it will lead us to sustain the course of one of our Senators, and disapprove the course of the other. I am by no means indifferent to the great necessity of aiding and protecting the freedmen while they are the "wards of the nation," and in a transition from slavery to freedom. But it may be that a law extending the operation of the present law for such period of time as may be necessary will receive the President's approval, and hence I have not deemed it expedient to condemn or approve of the veto of the particular bill which failed to become a law. As we are practical men, dealing with practical, living issues, it seems better for us to speak only on those unavoidable issues where science would be criminal.

Nor have I assumed to approve of all that has been said by the representatives of the Union party in either House of Congress. Sir, I take occasion, upon my own responsibility, to say that I disapprove of much that has been said by men who occupy leading and prominent positions in both Houses of Congress. President Johnson is the chief magistrate of this nation. He is entitled to be treated with kindness and respect, however much he may differ with us. He has a right, when a great measure is pending which may come before him for his approval, to express his dissent from it to a member of Congress, and state his reasons; hence I think it was unseemly to say, "for such expressions, in olden time, he would have forfeited his head." I think it was unseemly to speak of him as "the man at the other end of the avenue," or to charge him with sending "a white-washing message" into the Senate. Sir, I think it was not only unseemly, but, knowing as everybody who understands Andrew Johnson must know, that he is full of pluck and courage, that he has fought his way to his present elevated position, it was, I think, not a prudent or discreet exercise of statesmanship to assail him by harsh words. Perhaps other men in his position might have overlooked these expressions, or regarded them as excusable in the freedom

and latitude of debate. I desire that the President shall receive a kind recognition at the hands of the Union party in this State. In these resolutions we say: "Sir, we recognize your claims upon our affections. If you break with us it shall be by no act of ours." For myself I add, what I believe is the sentiment of every member of the Union party in this House, that in our opinion it would have been better if men occupying high and exalted positions in the Senate and House of Representatives had carried into practice the wisdom that is taught in that wise old proverb, "a soft answer turneth away wrath and grievous words stir up anger." But while I do not sustain all that has been said in Congress, I do sustain the action of Congress as a body, in holding that they have control over this question of representation, and in that respect the resolution means to say that they have been the true defenders of constitutional liberty, and have reflected the sentiment of their constituents. Such is my judgment.

My third resolution expresses the hope that by mutual concessions these differences may disappear. But I am asked: "How can you make concessions upon this?" It seems to me that the representatives of the great party which has saved this country in times far more perilous than these, may find a way to pass through the dangers and difficulties, and that when clouds are gathering thick around us, they ought, by consultation and mutual concessions to find some common ground upon which they can stand hand in hand. If the President thinks that Southern men ought to have better terms than Congress are willing to concede, I should hope that by mutual consultations and compromises, a satisfactory result might be arrived at, while none at all can be without proper effort. And, in regard to Tennessee, while I see the difficulties that might flow from the admission of Tennessee, while her governor and her legislature are opposed to it, while I concede that Tennessee has exceptional grounds which entitle her to favorable consideration, while I see that as the State from which the President comes it would be eminently fitting and proper that we should go to the very verge of principle for the sake of admitting that State, yet I see the difficulty of admitting her without weakening the grounds upon which Congress has planted itself—that this admission of Tennessee might operate to break down the barriers, and result in the destruction of the principle upon which Congress has stood. I believe that by concession, if it could be made agreeable to the President and he would cooperate with Congress, the Union party would be willing to see Tennessee admitted. I hope the President does not mean to turn against the Union party the power which they placed in his hands. I hope and trust that it will never be our duty to consider and pass judgment upon what would be the nature of his conduct under such circumstances. But, sir, if that evil day does come, if the President has been surrounded by flatterers who tell him he will sweep the country on that issue, it behooves us, in the kind but decided language of these resolutions,

speaking for the people of this State and for the Union party, to say that we do not believe those States have an absolute right now to representation, that we are not prepared, after having gone through the war and made the sacrifices we have made, to surrender, at the demand of these rebel constituencies, the right of governing and controlling us without our having a voice in it through the action of Congress. I say if the time shall ever come when the President, misled by parasites, shall turn those guns against the Union party, it will not abandon the work to which the last five years have been devoted. It will again buckle on its armor and enter the field; and, sir, although the President may have heard along back considerable Democratic thunder, like that which went from the city of Albany by a partisan vote of her common council, it is like that Democratic thunder which of late years has only been heard before the final result is announced. The voice of the people is beginning to be heard. State after state, through its Union representatives, with entire unanimity, has been speaking, firmly but kindly, representing the wishes of the Union party on this subject, and, sir, presidential power and presidential patronage will be found utterly powerless to defeat that great party, that has saved this country through these long years of war and bloodshed, and has preserved the honor of the old flag and placed this nation in a position where it is stronger in power and military resources, and stands higher than any other nation on the face of the earth. We are asking simply for the rights of the people. The people, through their representatives in Congress, choose to have something to say as to the terms upon which these rebels shall be restored to their former rights, and to pass upon the evidences of their returning loyalty and obedience. We have seen worse troubles than these. These, though they seem serious, are but trifling in comparison with those, that during the dark hours of the rebellion hung over our beloved land. Sir, we are not to be deterred by any sacrifices or any continuance of strife that may be necessary from securing the fruits of this great contest. Put the question to the loyal people of this country, "shall these rebellious states have the absolute right, against the consent of Congress, and without Congress being satisfied of their loyalty to re-entrance?" and I tell you that almost an unanimous negative would ring from one end of this nation to the other. Put it to the brave men who were lately in our army, and you would hear an equally unanimous negative. How is it in regard to the honored dead? Alas! they are not here to speak.

"On fame's eternal camping ground,  
Their silent tents are spread,  
And glory guards with solemn round  
The bivouac of the dead."

But, sir, they do speak, by their example; they speak by their influence, and if you could put the question to them you would hear, methinks, a unanimous expression, "Let not our sacrifice be in vain. The loyal people of the United States must govern the United States." If the issue must be met at the ballot boxes I

want no better motto on my banner than to go before the Union-loving masses with these words: "The loyal men of the United States shall govern the country." [Applause.] Sir, our fathers did a noble work when they laid the foundations of this government. They have earned the plaudits and secured the approval and the thanks of the lovers of human liberty throughout the world. In the great work of reconstructing this government let our statesmen so lay its foundations that they will be accorded like honor and glory. Let their work be so done that no blemish shall mar the beautiful proportions of the edifice. Let there be no secret infirmities and inherent defects to be developed as time, trial and experience shall bear upon it, leading to the ultimate overthrow and destruction of this noble structure. No sir, no. Let others do as they may, but let us, of the Union party of the State of New York see to it that this reconstructed Union shall be planted so firmly and so securely, on the foundations of loyalty, of truth and of justice, that in all future time our children and our children's children, to the 100th generation, shall be protected and secured against the recurrence of the terrible trials and perils through which we have so recently passed, the memory of which still hangs over us, like some fearful dream, and the mental agonies caused by which, will continue until time with us shall be no more. (Applause.)